

Order

Michigan Supreme Court
Lansing, Michigan

March 6, 2015

Robert P. Young, Jr.,
Chief Justice

150191-2

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 150191
COA: 313880
Macomb CC: 2012-000656-FC

KOLIE LANAR MCADOO,
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 150192
COA: 313881
Macomb CC: 2012-003414-FH

KOLIE LANAR MCADOO,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 28, 2014 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MCCORMACK, J. (*concurring*).

I concur in the order denying leave to appeal. I write separately to note my unease with the expert testimony regarding the toolmark evidence offered by the prosecution. In recent years significant doubt has been cast on the reliability and scientific foundation of that evidence. According to a 2009 forensic science report from the National Research Council of the National Academies, toolmark analysis lacks the empirical and statistical work that is needed to support conclusions regarding identity. The report noted that

[toolmark and firearms analysis suffers from the same limitations [as other types of] impression evidence. Because not enough is known about the variabilities among individual tools and guns, we are not able to specify how many points of similarity are necessary for a given level of confidence in the result. Sufficient studies have not been done to understand the reliability and repeatability of the methods. [National Research Council of the National Academies, *Strengthening Forensic Science in the United States: A Path Forward* (Washington, DC: National Academies Press, 2009), p 154.]

The report also raised concerns regarding the subjectivity and error rate in toolmark analysis, as well as the lack of a precisely defined testing process. *Id.* at 155. Given these criticisms, I believe there are serious questions about whether such evidence has an adequate scientific foundation to allow its admission under MRE 702. See *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 779-783 (2004) (discussing the trial court’s role as “gatekeeper” for the admission of expert testimony). I concur in this Court’s order denying leave to appeal, however, because this issue is unpreserved and I am not convinced that the defendant has demonstrated that he is entitled to relief given the other evidence of guilt.

BERNSTEIN, J., joins the statement of MCCORMACK, J.



s0303

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 6, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk